

GARY WINUK
Chief of Enforcement
TY D. MOORE
Commission Counsel
FAIR POLITICAL PRACTICES COMMISSION
428 J Street, Suite 620
Sacramento, CA 95814
Telephone: (916) 322-5660

Attorneys for Complainant

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA

In the Matter of)	FPPC No. 09/739
)	
)	
FRIENDS OF JOHN GUARDINO, JOHN)	STIPULATION, DECISION and
GUARDINO and LINELL HARDY,)	ORDER
)	
)	
Respondents.)	

Complainant Roman G. Porter, Executive Director of the Fair Political Practices Commission, and Respondents Friends of John Guardino, John Guardino, and Linell Hardy agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this matter and to reach a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondents, pursuant to Section 83116 of the Government Code.

Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to, the right to personally appear at any administrative hearing held in this matter, to be represented by an

1 attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the
2 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
3 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

4 It is further stipulated and agreed that Respondents Friends of John Guardino, John Guardino,
5 and Linell Hardy violated the Political Reform Act by receiving a cash campaign contribution of \$100 or
6 more, in violation of Section 84300 of the Government Code (1 count); and improperly reporting that a
7 contribution from a donor was made by intermediaries or agents, such that the identity of the donor was
8 not reported on the campaign statement filed by Respondents on October 5, 2006, in violation of
9 Sections 84301 and 84302 of the Government Code. (1 count). All counts are described in Exhibit 1,
10 which is attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a
11 true and accurate summary of the facts in this matter.


12 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
13 Respondents also agree to the Commission imposing upon them an administrative penalty in the amount
14 of Nine Thousand Dollars (\$9,000). A cashier's check from Respondents in said amount, made payable
15 to the "General Fund of the State of California," is submitted with this Stipulation as full payment of the
16 administrative penalty, to be held by the State of California until the Commission issues its decision and
17 order regarding this matter. The parties agree that in the event the Commission refuses to accept this
18 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission
19 meeting at which the Stipulation is rejected, all payments tendered by Respondents in connection with
20 this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and agree that in the
21 event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission
22 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be
23 disqualified because of prior consideration of this Stipulation.

24 //

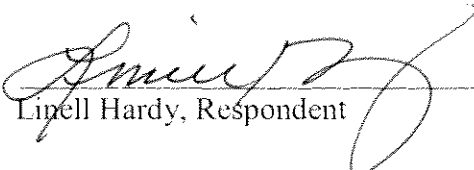
1
2 Dated: _____

Roman G. Porter, Executive Director
Fair Political Practices Commission

3
4
5 Dated: Aug. 5th, 2010


John Guardino, Respondent,
Individually and on behalf of
Friends of John Guardino

6
7
8
9
10 Dated: Aug. 5, 2010


Linell Hardy, Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties "In the Matter of Friends of John Guardino, John
3 Guardino, and Linell Hardy," FPPC No. 09/739, including all attached exhibits, is hereby accepted as
4 the final decision and order of the Fair Political Practices Commission, effective upon execution below
5 by the Chairman.

6
7 IT IS SO ORDERED.

8 Dated: _____

9 _____
10 Chairman
11 Fair Political Practices Commission
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

INTRODUCTION

Respondent John Guardino successfully ran for Cotati City Council in the November 7, 2006 election. The City Council appointed Respondent Guardino Mayor in January 2009. Respondent Guardino stepped down from public office on or about October 23, 2009.

Respondent Friends of John Guardino ("Committee") was the controlled committee for John Guardino. Respondent Linell Hardy was the treasurer for the Committee. Respondent Hardy currently serves on the Cotati Planning Commission and ran unsuccessfully for the Cotati City Council in the November 17, 2009 special election.

For the purposes of this Stipulation, Respondents' violations of the Political Reform Act (the "Act")¹ are stated as follows:

COUNT 1: In August 2006, Respondents Friends of John Guardino, John Guardino, and Linell Hardy, in 2006, received a cash campaign contribution of \$100 or more, in violation of Section 84300 of the Government Code.

COUNT 2: Respondents Friends of John Guardino, John Guardino, and Linell Hardy improperly reported that a contribution from George Barich was made by Adrienne Lauby, Robin Birdfeather and Tim Foley such that the identity of the donor, George Barich, was not reported on the campaign statement filed by Respondents on October 5, 2006, in violation of Sections 84301 and 84302 of the Government Code.

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited. The Act, therefore, establishes a campaign reporting system designed to accomplish this purpose of disclosure.

Prohibition of Cash Contributions or Expenditures of \$100 or More

Section 84300, subdivision (a), states that no contribution of one hundred dollars (\$100) or more shall be made or received in cash. It goes on to state that if a cash contribution, other than a late contribution, is negotiated or deposited, it shall not be deemed received if it is refunded within 72 hours of receipt. Section 84300, subdivision (c), states that no contribution of one hundred dollars (\$100) or more other than an in-kind contribution shall be made unless in

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

the form of a written instrument containing the name of the donor and the name of the payee and drawn from the account of the donor or the intermediary, as defined in Section 84302.

Making Contributions in the Name of Another Person

Section 84301 provides that no contribution shall be made by any person in a name other than the name by which such person is identified for legal purposes. Section 84302 provides that no person shall make a contribution on behalf of another, or while acting as the intermediary or agent of another, without disclosing both the name of the intermediary and the contributor. Regulation 18432.5, subdivision (a), further states that a person is an intermediary for a contribution if the recipient of the contribution “would consider the person to be the contributor without the disclosure of the identity of the true source of the contribution.” Regulation 18432.5, subdivision (a), also instructs a recipient of a contribution to include in his or her campaign statement the name of the intermediary and other required information, if the recipient knows or has reason to know that the contribution was made by an intermediary.

Section 84302 provides that no person shall make a contribution on behalf of another, or while acting as the intermediary or agent of another, without disclosing both the name of the intermediary and the contributor. Regulation 18432.5 states that a person is an intermediary for a contribution if the recipient of the contribution “would consider the person to be the contributor without the disclosure of the identity of the true source of the contribution.”

Treasurer Liability

Under Section 84100 and Regulation 18427, subdivision (a), a committee’s treasurer has the duty to ensure compliance with all requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds. Pursuant to Sections 83116.5 and 91006, the treasurer of a committee may be held jointly and severally liable, along with the committee, for the committee’s reporting violations. Under Regulation 18427 a treasurer should use all reasonable diligence in the preparation of campaign statements and should cause to be checked, and, if necessary, corrected, information in campaign statements a person of reasonable prudence would question based on all the surrounding circumstances of which the treasurer is aware or should be aware by reason of his or her duties under this regulation and the Act.

Returning Laundered Contributions

Under Section 85701, any candidate or committee that receives a contribution in violation of Section 84301 shall pay to the General Fund of the state the amount of the contribution.

SUMMARY OF THE FACTS

COUNT 1: Receiving a Cash Contribution

Respondents were aware that Ms. Berman was campaigning and receiving contributions on behalf of the Committee as their agent.

In early August 2006, Ms. Berman received an envelope containing a \$1,000 cash contribution from Mr. Barich for the Committee. The City of Cotati has a campaign contribution limit of \$350. No money was ever refunded to Mr. Barich.

This contribution was reported on the campaign statement filed by the Committee on or about October 5, 2006, for the period ending September 30, 2006, but was attributed to Adrienne Lauby, Tim Foley, and Robin Birdfeather in the amounts \$301, \$350 and \$350, respectively.

By receiving a cash contribution of \$100 or more from George Barich, Respondents violated Section 84300, subdivision (a).

In the alternative, a cash contribution of \$350 was reported, on a campaign contribution ledger maintained by the Committee, as having been received on September 4, 2006, from Robin Birdfeather. Respondents deposited and failed to refund this contribution within 72 hours, on or before September 7, 2006. Therefore, Respondents violated Section 84300, subdivision (a).

COUNT 2: Contributions Not Made Under Legal Name of the Donor

After receiving the abovementioned \$1,000 cash contribution from Mr. Barich, Respondents' agent, Ms. Berman, distributed the money between three individuals. Ms. Berman instructed Adrienne Lauby, Tim Foley, and Robin Birdfeather, to act as intermediaries or agents and make contributions to the Committee in their own name and not the name of any other donor. These contributions are reported on the Committee campaign statement filed by Respondents on October 5, 2006, for the period ending September 30, 2006.

Following receipt of \$300 from Ms. Berman, Respondent Lauby wrote a check to the Committee for \$301, making a contribution in her name only, which a Committee donation ledger indicates was received on September 4, 2006.

Tim Foley wrote one check for \$350 to the Committee, making a contribution in his name only, which a Committee donation ledger indicates was received on September 5, 2006.

As noted above, Ms. Birdfeather made a cash contribution of \$350, in her name only, which a Committee donation ledger indicates was received on September 4, 2006. This cash was deposited and later refunded on September 8, 2006. This "refunded" contribution was used that same day as a down payment for signs, purchased from Hines Signs, which were ordered by Respondent Hardy on September 7, 2006. This non-monetary contribution was also attributed only to Ms. Birdfeather, not Mr. Barich, on the campaign statement filed October 5, 2006. By virtue of this cash contribution, Respondents had a duty to inquire regarding the source of this contribution. Respondents failed to inquire.

On or about October 14, 2009, an individual came to Respondent Guardino and informed him that George Barich was claiming he had made a \$1,000 cash contribution to the Committee.

On or about November 17, 2009, Respondents filed amendments to the Committee campaign statement covering the period ending September 30, 2006, to indicate that George Barich was the true source of the abovementioned contributions which had previously been attributed to Adrienne Lauby, Tim Foley, and Robin Birdfeather.

By improperly reporting the true donor of three contributions received by the Committee, on the campaign statement filed on October 5, 2006, Respondents violated Sections 84301 and 84302 of the Act.

CONCLUSION

This matter consists of 2 counts of violating the Act, which each carry a maximum administrative penalty of five thousand dollars (\$5,000) per count for a maximum administrative penalty of ten thousand dollars (\$10,000).

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

COUNT 1: Receiving a Cash Contribution

Violation of the cash contribution prohibition has historically been considered a very serious violation, as it can prevent tracking of the true source of campaign contributions.

The typical administrative penalty for violating cash contribution prohibitions is typically at the upper end of the penalty range.

Aggravating Factors

In this case, there was actual public harm because the public was actually deprived of information about who was contributing financially to Friends of John Guardino.

Mitigating Factors

None.

Based on the particular facts and circumstances of this matter, an administrative penalty in the upper end of the range, or four thousand five hundred dollars (\$4,500), is appropriate.

COUNT 2: Contributions Not Made Under Legal Name of the Donor

Campaign money laundering is one of the most serious violations of the Act, as it denies the public of information about the true source of a candidate's financial support. Therefore, the typical administrative penalty in a campaign laundering case has historically been at or near the maximum penalty per violation, depending on the circumstances of the violation.

Aggravating Factors

Respondents negligently violated the Act.

Mitigating Factors

Respondents paid \$1,000 to the City of Cotati General Fund. The City of Cotati requires a candidate or committee to disgorge laundered funds to the City General Fund, similar to the requirement found under Section 85701, which requires candidates disgorge laundered contributions to the State General Fund.

Respondents ultimately filed an amended campaign statement for the reporting period ending September 30, 2006, which properly names George Barich as the true donor of the \$1,000 contribution previously attributed to Mr. Foley, Ms. Hardy, and Ms. Birdfeather.

Therefore, based on the particular facts and circumstances of this matter, an administrative penalty in the upper end of the range, of four thousand five hundred dollars (\$4,500), per count, is appropriate.

Penalty

Accordingly, the facts of this case justify an imposition of an administrative penalty of nine thousand dollars (\$9,000).

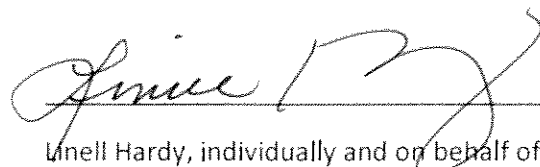


**FAIR POLITICAL PRACTICES COMMISSION
ENFORCEMENT DIVISION**

WAIVER OF RIGHT TO PROBABLE CAUSE HEARING AND ADMINISTRATIVE HEARING

1. I, the undersigned am Treasurer for the Respondent Committee in FPPC Case No. 09/739. I am representing both myself, individually, and the Campaign Committee "FRIENDS OF JOHN GUARDINO."
2. By signing the Stipulation, Decision and Order provided to me by the FPPC Enforcement Division I agree that I and the Respondent Committee have committed the violations as detailed in the supporting Exhibit. This stipulation is void and of no effect and no statement or admission herein may be used for any purpose whatsoever if the Commission rejects the settlement embodied in the Stipulation, Decision and Order provided to me by the FPPC Enforcement Division. In that event, Respondents, and each of them, reserve their right to litigate any and all counts at issue in the Exhibit to the Stipulation, Decision and Order. In all other circumstances, Respondents agree that by the execution of the Stipulation, Decision and Order and this Waiver, they have stipulated to the two specific violations described in the Exhibit to the Stipulation, Decision and Order, and the details thereof described in that Exhibit.
3. I acknowledge that I understand and have been provided advice by our legal counsel as to our rights to a Probable Cause Hearing and Administrative Hearing under the Political Reform Act, Administrative Procedures Act, and all other relevant laws.
4. Except as otherwise provided in paragraph 2, Respondents hereby waive our rights to a Probable Cause Hearing and Administrative Hearing and understand and agree that our case will proceed to a default recommendation by the Enforcement Division to the Fair Political Practices Commission at its September hearing date if I do not provide a cashiers check for the agreed upon fine amount (\$9,000) by October 31, 2010.

Dated: Aug. 5, 2010



Linell Hardy, individually and on behalf of
Respondent Friends of John Guardino



**FAIR POLITICAL PRACTICES COMMISSION
ENFORCEMENT DIVISION**

WAIVER OF RIGHT TO PROBABLE CAUSE HEARING AND ADMINISTRATIVE HEARING

1. I, the undersigned am Candidate for the Respondent Committee in FPPC Case No. 09/739. I am representing both myself, individually, and the Campaign Committee "FRIENDS OF JOHN GUARDINO."

2. By signing the Stipulation, Decision and Order provided to me by the FPPC Enforcement Division I agree that I and the Respondent Committee have committed the violations as detailed in the supporting Exhibit. This stipulation is void and of no effect and no statement or admission herein may be used for any purpose whatsoever if the Commission rejects the settlement embodied in the Stipulation, Decision and Order provided to me by the FPPC Enforcement Division. In that event, Respondents, and each of them, reserve their right to litigate any and all counts at issue in the Exhibit to the Stipulation, Decision and Order. In all other circumstances, Respondents agree that by the execution of the Stipulation, Decision and Order and this Waiver, they have stipulated to the two specific violations described in the Exhibit to the Stipulation, Decision and Order, and the details thereof described in that Exhibit.

3. I acknowledge that I understand and have been provided advice by our legal counsel as to our rights to a Probable Cause Hearing and Administrative Hearing under the Political Reform Act, Administrative Procedures Act, and all other relevant laws.

4. Except as otherwise provided in paragraph 2, Respondents hereby waive our rights to a Probable Cause Hearing and Administrative Hearing and understand and agree that our case will proceed to a default recommendation by the Enforcement Division to the Fair Political Practices Commission at its September hearing date if I do not provide a cashiers check for the agreed upon fine amount (\$9,000) by October 31, 2010.

Dated: Aug. 5th, 2010

John Guardino, individually and on behalf of
Respondent Friends of John Guardino